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Attorneys for: Plaintiff

IN THE DISTRICT COURT OF GUAM

AXE MURDERER TOURS GUAM, INC.,)	CIVIL ACTION NO.
)	
)	
Plaintiff,)	
vs.)	
)	COMPLAINT FOR DISCLOSURE OF
UNITED STATES DEPARTMENT OF AIR)	INFORMATION PURSUANT TO
FORCE,)	FREEDOM OF INFORMATION ACT
)	
)	
Defendant.)	
_____)	

Plaintiff **AXE MURDERER TOURS GUAM, INC.**, by its attorney, alleges for its complaint:

THE PARTIES

1. Plaintiff **AXE MURDERER TOURS GUAM, INC.** (hereinafter referred to as "Plaintiff") is a corporation incorporated and doing business in Guam. Plaintiff's business consists of operating dive shops and instructing divers.
2. Defendant United States Department of Air Force (hereinafter referred to as "The Department") is an agency of the federal government. Among its many

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functions it contracts with vendors to provide services on its bases for benefit and use by members of the Air Force.

3. The Department is an operating unit of Department of Defense (hereinafter referred to as "DOD"), under whose auspices it functions.

JURISDICTION

4. This action arises under 5 USCA §552 et seq. (The "Freedom Of Information Act" or "FOIA"). This court has jurisdiction of this action under 5 USCA §552 (a)(4)(B).

VENUE

5. Venue is premised on the place of business of Plaintiff and is proper in this district under 5 USCA §552 (a)(4)(B).

FACTS

6. This action arises from the failure of The Department either on its own behalf or on the behalf of DOD, to disclose certain documents in response to requests made by Plaintiff through its president, Trent Scheibe, pursuant to FOIA.
7. On or about July 14, 2017 Plaintiff made a request for any and all documents, memos, emails, notes, etc. from any source, including but not limited to discussions, meetings, telephone calls, investigations, etc. between any individuals, including but not limited to 36CONS, 36FSS, MWR, Office of Special Investigations, the Legal Office and Central Command regarding:

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(1) The current Dive Shop Concessionaire Contract FA5240-13-H-0001 originally dated 19 November 2012. Requested dates to include the date of original RFP posting through present day, including all archived materials.

(2) Any previous Dive Shop Concessionaire Contracts which pre-date contract FA5240-13-H-0001. Requested dates to include the date of the very "first" Dive Shop Concessionaire Contract on Anderson Air Force Base Guam through present day, including all archived materials.

(3) Any and all documents, memos, emails, etc. related to the dissolution of the original contract immediately preceding contract FA5240-13-H-0001, including minutes/notes from any meetings that may have taken place between any Andersen Air Force Base Guam Squadron or Office personnel, including but not limited to 36CONS, 36FSS, MWR, Office of Special Investigations, the Legal Office and Central Command and any individuals who were directly or indirectly involved with any submitted RFP's or contract awards.

(4) Specifically, all documents, memos, notes, emails, etc. of conversations between Contracting personnel (including but not limited to Daniel Sindorf) and any individuals (including but not limited to Wassana McCann and Billy Melton) or companies (including but not limited to Bangkok Design) who were directly or indirectly involved with any submitted RFP's or contract awards related to the dissolution of the original contract immediately preceding contract FA5240-13-H-0001.

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(5) Any and all documents, memos, emails etc. related to any other businesses conducting dive shop operations, instruction or solicitation on Anderson AFB, Guam.

(6) Specifically, all documents, memos, emails, etc. from former Contracting Specialist Daniel Sindorf to AAFB 36CONS Squadron Commander Hennessey, including archived files.

(7) Specifically, all documents prepared by Contracting Specialists Daniel Sindorf and placed in a special file that Contracting Specialist Sindorf gave to his successor in 36CONS when Specialist Sindorf was reassigned and which file contains background information, including but not limited to, Micronesian Dive Association (MDA) and related dive shop procurement history.

(8) Any and all documents, memos, emails, etc. related to previous procurements of dive shop services that discuss attempts by former or current members/employees of the 36th Wing or anyone else to influence or change the outcome of dive shop concessionaire contract source selections. Specifically, a copy of a document named "Remember the T-Birds" or "Remember the Thunderbirds."

(9) Any and all documents, memos, emails, etc. related to investigations by the Andersen Air Force Base Guam Office of Special Investigations into Cori Gobin, Clay Gobin, Lee Weber, Steve "Taz" Woborsky, and Micronesian Dive Association (MDA).

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(10) Any and all documents, memos, emails, etc. related to investigations by the Andersen Air Force Base Guam Office of Special Investigation into requests from 36CONS and Contract Specialist Daniel Sindorf to investigate wrong doing or improper influences by individuals or organizations with dive shop contract selection.

8. On or about August 29, 2017, The Department delivered its response to Plaintiff. The Department's response consisted of a two page letter and a CD containing 472 pages. Of the 472 pages, 159 pages were completely redacted, which equated to 34% of the response. The 159 redacted pages sited (b)(5) exemption as basis for the redaction. There was no detailed explanation for the redacted material, nor was there a Vaughn Index for the redacted material. The Department simply concluded that redacted material was exempt from disclosure under FOIA exemptions 4,5 and 6, found at 5 USCA §552 (b)(4), (5) and (6).
9. By letter dated November 22, 2017, Plaintiff through its counsel administratively appealed The Department's denial of redacted information.
10. The Department has not responded to Plaintiff's appeal.
11. Based on The Department's failure to respond to Plaintiff's appeal in a timely manner, Plaintiff has exhausted its administrative remedies.
12. Although The Department was required under FOIA to determine the appeal of FOIA within 20 business days (5 USCA §552 (a)(6)(A)(ii)), The Department has yet to rule on the appeal. By certified mail/return receipt, the Office of the Secretary of the Air Force acknowledged receipt of the appeal.

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COUNT ONE

13. Plaintiff repeats, re-alleges, and incorporates the allegations in the above paragraphs as though fully set forth here.
14. The Department, as an agency subject to FOIA, must release in response to a FOIA request, any disclosable documents in its possession at the time of its response to the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.
15. The Department has asserted no lawful basis under FOIA for withholding the redacted material and other material Plaintiff has personal knowledge should be in The Department's records.
16. Any FOIA exemption to the requested documents is limited, and The Department is required to explain why withheld information is exempt, and not simply state general conclusions documents are exempt under 5 USCA §552 (b)(4),(5) or (6) exemptions.
17. The Defendant's failure to provide the redacted material and other emails known by Plaintiff to be part of the procurement record, or to specifically explain the basis for missing material and claimed exemptions of produced material, violates FOIA.
18. Plaintiff is entitled to an order compelling The Department to produce the material unredacted, and to produce material in the Defendant's possession not produced in any fashion in response to the FOIA request.

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COUNT TWO

19. Plaintiff repeats, realleges, and incorporates the allegations in the above paragraphs as though fully set forth here.
20. The Department, as an agency subject to FOIA, must release in response to a FOIA request any disclosable documents in its possession at the time of its response to the request and provide a lawful reason for withholding any materials as to which it is claiming an exemption.
21. Under 5 USCA §552 (a)(6)(A)(ii), The Department was required to provide documents or issue a denial within 20 business days of receiving Plaintiff's appeal of The Department's response to the request.
22. Under 5 USCA §552 (a)(6)(C)(i), a person making a request for materials under FOIA and an appeal of the response to that request shall be deemed to have exhausted his administrative remedies with respect to such appeal if the agency fails to comply with the actual time limit provisions of FOIA.
23. Accordingly, Plaintiff is deemed to have exhausted its administrative remedies as to the request for unredacted materials and The Department's failure to respond to Plaintiff's appeal, thus giving this court jurisdiction to hear this matter.
24. The Department has asserted no lawful basis under FOIA for withholding the redacted information or missing material not produced sought by Plaintiff's request, and which was not addressed by any response to Plaintiff's appeal.

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25. The Department's failure to provide redacted information and other emails known by Plaintiff to be part of the procurement record, violates FOIA.

26. Plaintiff is entitled to an order compelling The Department to produce the material unredacted, and to produce material in the Defendant's possession not produced in any fashion in response to the FOIA request.

Therefore, Plaintiff respectfully requests that this court enter judgment on its behalf:

- A. Declaring that the materials sought by Plaintiff's FOIA request which were redacted must be disclosed under FOIA;
- B. Directing the Department to produce all other material known to be part of the procurement record unredacted to Plaintiff within 20 days of the continued order;
- C. Directing The Department to provide the materials unredacted to Plaintiff within 20 business days of the court's order;
- D. Awarding to Plaintiff the cost of this proceeding, including reasonable attorney's fees; and,
- E. Granting to Plaintiff such other and further relief as court deems appropriate.

CUNLIFFE & COOK
A Professional Corporation
Attorneys for Plaintiff

Date: _____

8/7/18

By _____

JEFFREY A. COOK, ESQ.

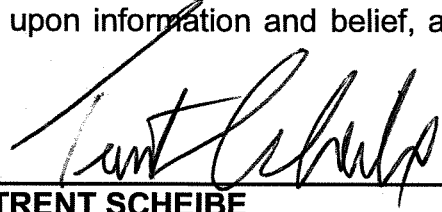
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VERIFICATION

I, Trent Scheibe, President of Axe Murderer Tours Guam, Inc.; that I have read the foregoing Complaint For Disclosure of Information Pursuant to Freedom of Information Act and know the contents thereof; that the same is true of my own knowledge, except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.



TRENT SCHEIBE